

171 N.E. 256 (1930). It has also been upheld by this court. *Dunbar v. New York*, 251 U.S. 516 (1920).

Instead of going to court to foreclose on a tax lien or obtain a judgment for the past-due water bills, many Ohio's municipalities have utilized a different tool. The disconnection of water service to a property which is delinquent in payment of its water bills has proven to be an expeditious alternative to litigation. Such a policy is permitted under Ohio law. *Pfau v. City of Cincinnati*, 142 Ohio St. 101, 50 N.E.2d 172 (1943).

The League assisted Columbus in conducting a volunteer-response poll of governmental water utilities and their collection practices. Of the 31 respondents from Ohio, 28 of the utilities held the property owner responsible for the water bill of tenants. 16 of the 31 respondents, including Springfield and Cincinnati, utilize termination of water services as a method of encouraging the payment of delinquent water bills. It is respectfully suggested that even the **possibility** that water service may be terminated is one of the most effective tools that a municipality has to collect delinquent accounts. The denial of the ability to use this tool will have an adverse effect on the collection rates of Ohio municipal water utilities, to the detriment of all of the ratepayers who pay their bills.

## LEGAL ARGUMENTS

### Rational Basis

All parties agree that the principal consequence of terminating water service to a rental property is to make that property less attractive as a residence. Consequently, the renter may be the unenviable position of having to vacate such a property or (if allowable under local ordinances) having to utilize water from other sources, even though he or she did not incur the debt for which services were terminated. While this may be inconvenient for the tenant, it is not unconstitutional. It is precisely the fact that the property becomes less economically viable to the delinquent landlord which makes the policy rational. The landlord has a strong economic incentive to pay the bill, or the economic benefit of the property will be lost; alternatively, the tenant could volunteer to pay the bill, then subsequently set off the payment from future rental payments. In either event, the municipality recovers the debt. The tool which is used, disconnection of utility services (even the threat of disconnection), is rationally related to the legitimate end of the municipality: collection of the debt.

### Not Similarly Situated

The touchstone of the equal protection clause is that persons who are similarly situated should be treated equally. *Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 439, 87 L. Ed. 2d 313, 105 S. Ct. 3249 (1985).

Those tenants who move into a property where there is a delinquent water bill (or other delinquent

debt) are, as a matter of Ohio property law, not similarly situated to those tenants who move into a property where there is no such debt. Theoretically, a lien could be filed for such delinquent water bill, under Ohio Revised Code (R.C.) §734.04(A) and a foreclosure action brought pursuant to R.C. §5721.10. For delinquent debts that are not on the tax list and duplicate, but have been reduced to judgment, execution against real property (foreclosure) is brought under R.C. Chapter 2329.

Foreclosure on property results in the dispossession of tenants because a tenant's right to possession is no greater than the title holder's rights. *New York Life Ins. Co. v. Simplex Products Corp.* (1939), 135 Ohio St. 501, 21 N.E.2d 585; *Hembree v. Mid-America Federal* (1989), 64 Ohio App. 3d 144, 580 N.E.2d 1103. Thus, under established property law in Ohio, a person who did not incur a debt could have a possessory interest in property extinguished by operation of law. Consequently, in Ohio, a person who leases property from another person who has delinquent debt is simply **not** similarly situated to a person who leases from another person whose debts are not delinquent.

The fact that the process of dispossession can be accelerated by the termination of utility services speaks to its efficacy: i.e. the rational basis for the municipal collection policy. The result (the dispossession of an innocent, third party tenant from rental property as a consequence of collecting a delinquent debt of the property owner) is identical to foreclosure.

The Sixth Circuit's decision in this case, predicated on its prior decision in *Craft v. Memphis Light, Gas & Water Div.*, 534 F.2d 684, 689-90 (6<sup>th</sup> Cir.

1976), *aff'd on other grounds*, 436 U.S. 1, 56 L.Ed.2d 30, 98 S.Ct. 1554 (1978), wrongly concludes that persons who are dissimilarly situated under Ohio real property law are, in fact, similarly situated. This improper conclusion should be reversed by this court.

### CONCLUSION

This honorable court is respectfully requested to accept jurisdiction over this case in order to settle the conflict between the circuits (and with Ohio case law) identified by the Petitioners, and to reverse the decision of the Sixth Circuit Court of Appeals. This case is of the utmost importance to Ohio municipalities and is worthy of this court's time and attention.

Respectfully submitted,

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